



Appeal Decision

Hearing held on 9 April 2024

Site visit made on 9 April 2024

by **A Owen MA BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th May 2024

Appeal Ref: APP/V2255/W/23/3333589

The Retreat, Elverland Lane, Ospringe, Faversham ME13 0SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Annie Gibbs against the decision of Swale Borough Council.
 - The application Ref is 23/504136/FULL.
 - The development is temporary change of use of the land for the stationing of two static mobiles and two touring caravans for Gypsy/Traveller occupation for a single family for a period of 3 years; creation of access track and associated hard and soft landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a temporary change of use of the land for the stationing of two static mobiles and two touring caravans for Gypsy/Traveller occupation for a single family, and creation of access track and associated hard and soft landscaping for a period of 3 years, at The Retreat, Elverland Lane, Ospringe, Faversham, ME13 0SP in accordance with the terms of the application, Ref 23/504136/FULL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant and her family have been on the site since 2015. A number of applications have been submitted to regularise the current use since then and an appeal¹ was dismissed in 2018 for a development similar to that before me. At that time it was proposed to re-site the caravans slightly further to the east with access taken from Elverland Lane.
3. It is not disputed by the parties that the appellant and her family meet the definition of gypsies set out in the national Planning Policy for Traveller Sites (PPTS). I have no reason to disagree.

Main Issues

4. The main issues are:
 - i) the effect of the development on the character and appearance of the area and the landscape and scenic beauty of the Kent Downs National Landscape² (NL);
 - ii) whether the site is suitably located in respect of its accessibility to services and facilities;

¹ Ref APP/V2255/W/17/3172935

² Formerly Area of Outstanding Natural Beauty (AONB)

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- iii) the effect on highway safety;
- iv) whether the development would be likely to affect the integrity of the Swale Special Protection Area (SPA), and if so whether a mechanism to secure suitable mitigation has been secured; and
- v) whether there are other considerations that outweigh any conflict with the development plan.

Reasons

Character and appearance

5. The appeal site comprises land at the junction of Faversham Road and Elverland Lane. Across the site there are two static mobiles and two touring caravans, some other smaller storage buildings and some domestic paraphernalia. The appeal site is part of a wider landholding owned by the appellants which includes an orchard, which is primarily located on higher land to the east.
6. The wider area is overwhelmingly rural in character with only a few sparsely located dwellings. The land rises gently either side of Faversham Road and the appeal site is at the bottom of a shallow valley. The site is within the Kent Downs NL. The Council suggest the undeveloped character of the area is a positive characteristic contributing to the scenic beauty of the NL, with which I concur.
7. The caravans, stores, hardstanding and other residential paraphernalia are visible from Faversham Road and Elverland Lane through the roadside vegetation. Though none of them are large structures, the number and spread of the caravans, stores, and other paraphernalia as well as the hardstanding, detract from the open and undeveloped character of the area and hence the scenic beauty of the NL.
8. The Inspector into the previous appeal also found that the caravans, hardstanding and domestic paraphernalia would be very intrusive. I recognise the position of the caravans then was slightly further to the east and therefore on slightly higher land than they are now. Nonetheless, they are closer to the roads now and although it is likely that the roadside vegetation has thickened since 2018, views through this vegetation remain. Moreover, supplementary landscaping could not wholly be relied upon to mitigate the visual impact.
9. I was informed that since the time of the previous Inspector's decision, The Queen's Regimental Riders Association have erected a building on the west side of Faversham Road. Though I noted this, as well as other gypsy sites further along Elverland Lane, the character of the area remains to be strongly rural and undeveloped. Moreover, the other gypsy accommodation along Elverland Lane is set back further from the road and is less prominent than the scheme before me.
10. Although, because a temporary consent is sought, the harm to the character and appearance of the area and the NL is not permanent, it is nonetheless considerable. The development therefore conflicts with Policy DM 24 of the Swale Borough Local Plan (2017) (the 'Local Plan') which aims to ensure that the character of the Kent Downs NL is protected. It also conflicts with Local Plan policies DM 10, which states that gypsy and traveller sites should not cause significant harm to the NL; DM 14 which seeks to ensure all development

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reflects the positive characteristics of the locality; and ST 1, which seeks to conserve the natural environment. However I find little conflict with policy DC 26, which relates to rural lanes, given the limited volume of traffic generated by the development and the limited impact of the development on the character of the roads themselves.

11. The development also fails to accord with policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan which together seek to conserve and enhance the natural beauty of the NL.
12. I have also had regard to the National Planning Policy Framework (the Framework), which sets out that great weight should be given to conserving the landscape and scenic beauty in AONBs.

Accessibility

13. The site is around four miles from Faversham town centre. It is closer to the villages of Doddington and Newnham, but these have very few facilities or services to support even day to day living. Moreover, there is no pavement link from the site to any settlement. The site therefore has poor access to these facilities by sustainable modes of transport.
14. I accept that it is not uncommon for gypsy and traveller sites to have poor access to shops or services given many are located in the countryside, as evidenced by the other gypsy sites further along Elverland Lane. Nonetheless, the PPTS advises that new gypsy and traveller sites in open countryside that are away from existing settlements should be very strictly limited.
15. As such I consider that the site does not have acceptable access to services and facilities by sustainable modes of transport. This view is consistent with that of the Inspector of the previous appeal.
16. The development therefore conflicts with policy DM 14 which requires all development to achieve convenient routes for pedestrians and cyclists, and policy ST 3 which sets out that development in the open countryside will not be permitted unless it is supported by national policy.

Highway safety

17. Access to the site is taken from a point on the corner of Elverland Lane and Faversham Road. The high hedging on both sides of the access means it would be difficult for vehicles emerging from the site to see along Elverland Lane or north along Faversham Road.
18. Elverland Lane is narrow and most likely is rarely used, as evidenced by grass growing along its centre. Also any vehicles travelling along this road towards the site would naturally be slowing down to give way to traffic on Faversham Road. As such it is unlikely the lack of visibility in this direction makes the access unsafe.
19. Faversham Road is the main road between the A2 and the villages of Newnham and Doddington. I saw at my site visit that although it is not a busy road, it had a steady flow of vehicular traffic. Although visibility to the north from the access is poor, it is possible for vehicles to pull forward of the access across Elverland Lane. This would allow better visibility to the north and, in view of the infrequent use of Elverland Lane, would not be likely to obstruct traffic on that

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road. Given the speed limit of Faversham Road would be 50mph here, the visibility from this point may still not meet the required standard. However by using an existing road junction, and in view of the limited number of traffic movements the development likely generates, I do not consider any shortfall in visibility makes the access unsafe.

20. As such I consider the use of the access is unlikely to result in an unacceptable effect on highway safety. Therefore, in this respect, there is no conflict with policy DM 14 which seeks to ensure all development provides a safe vehicular access.

SPA

21. The site is within 6km of the Swale SPA and Ramsar site. The qualifying features of the Swale SPA are dark-bellied brent goose, dunlin, and assemblages for breeding birds and waterbirds. The conservation objectives are broadly to maintain and restore the extent, distribution, structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; and the population and distribution of each of the qualifying features within the site.
22. The Conservation of Habitat and Species Regulations 2017 require that the competent authority must ensure that there are no significant adverse effects from development, either alone or in combination with other projects, that would adversely affect the integrity of protected sites.
23. A study by Footprint Ecology in 2012 stated that there has been marked decline in the numbers of birds using the SPA and that declines are particularly apparent at the locations with the highest levels of public access. Recreational disturbance such as dog walking, cycling, jogging, walking and family outings is a potential cause of the declines and so an increase in the volume of people is likely to contribute to additional pressure on the SPA site. The study found that 75% of visitors to the SPA came from within a 6km radius. As such development within 6km of the access points to the SPA is particularly likely to lead to increase in recreational use of the SPA. Therefore, I consider that the development is likely to have an adverse effect on the integrity of the SPA.
24. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) advises that adverse effects can be mitigated. Such mitigation measures will include awareness raising, on-site wardening, provision of signage and access infrastructure, and provision or enhancement of green space away from the SPA. In the associated Bird Wise North Kent Mitigation Strategy (2018), these measures are detailed, costed and a developer contribution tariff per dwelling is calculated. Allowing for inflation, this tariff stands at £328.27 per residential unit.
25. The appellant has made a direct payment to the Council in line with the tariff. The Council have confirmed they collect such payments and transfer them to Bird Wise, who implement the SAMMS, every quarter. Natural England have been consulted and agree that the payment can avoid an adverse effect on the integrity of the SPA.
26. Given the evidence before me I am satisfied that the mitigation measures have been adequately secured and would be used for their intended purpose. I am satisfied that the measures would sufficiently mitigate any adverse effects of

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the development on the identified site. The contribution would be necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations.

Other considerations

27. It is not disputed by the parties that the Council cannot demonstrate a sufficient supply of gypsy and traveller sites and although work has commenced on a new Local Plan, the Council advise that a Regulation 18 consultation on the Plan would not be likely to occur until the end of this year. The PPTS states that the failure of a Council to demonstrate an up-to-date supply of deliverable sites should be a significant material consideration, except where the proposal is on land designated as AONB (among other designations). As such, this issue does not count significantly in favour of the scheme, though it remains a consideration.
28. The latest Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 80 pitches over the period 2022 – 2027, of which most, though not all, could be met by regularisation of existing sites. To that end, the Council state that they are granting permissions at a rate equivalent to the annualised need. However the GTAA also recognises that these figures are minimums, and that additional need may arise, for example by higher levels of migration than anticipated.
29. The appellant explained that of the 11 sites identified in the GTAA with vacant pitches, 10 are private (with the other identified as being unauthorised) so would not be available to the appellant. In any case, most only have one vacant pitch so would not be suitable for the appellant and her family. The appellant also advised that the waiting list for the Council site at Murston is long, and the GTAA confirms that this site is at capacity. They cannot afford to buy another site and have no other family nearby. The fact that they have no alternative accommodation available to them, which could result in a roadside existence were they to leave the site, carries significant weight in favour of the development.
30. At the hearing it was explained how the appellant and her husband are both patients at a local surgery and are both outpatients at hospitals further afield. Furthermore, the appellant is registered disabled. Most of their medical conditions which require hospital attention have occurred in the last four months. Their daughter takes them to their appointments at these facilities, which occur roughly on a weekly basis.
31. Their grandson is at a school for pupils with special educational needs which is about 2 miles away. He travels to school by car, and it is important for him to be close to the school as a longer journey would cause him anxiety. The nearest other suitable school is around 16 miles away. He is in year 11, will soon be undertaking exams and is hoping to stay at the school into their 6th form with a view to getting a Construction Skills Certification. This is clearly an important year for his education and his commitment to continue into further education when, I understand, many children from gypsy families cease their education before that stage, is to be applauded. I also recognise that he is an outpatient at a local hospital. Their other grandchild is at a local mainstream school which they attend regularly and at which they are thriving.

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32. I have had regard to the appellant's rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the Roma Gypsy way of life. It is a qualified right, and interference may be justified where that is lawful and in the public interest.
33. Dismissing this appeal would be a significant interference with the appellant's rights under Article 8 in that it would necessitate her and her family leaving the site with no other site to go to. However, interference with those rights in this instance would be in accordance with the aims of the PPTS to very strictly limit traveller sites in the open countryside, and the aims of local and national policy with respect to conserving the character of the area and scenic beauty of the NL.
34. However, that balance is subject to the best interests of children and there is no other consideration more important than that. In this case, I give substantial weight to her grandson's best interests, which are for him to remain in close proximity to his current school to finish his further education. This would be in around 2½ years' time which would broadly coincide with the 3 year temporary permission sought.

Planning balance

35. The development causes harm to the character and appearance of the area and the scenic beauty of the NL, to which I give great weight. The site also has poor access to services and facilities by sustainable modes of transport. Although I find the access does not result in unacceptable harm to highway safety and that the harm to the Swale SPA has been mitigated, the development fails to accord with the development plan as a whole.
36. Weighed against that is the lack of alternative sites available to the appellant and their personal circumstances, including the medical needs of the family and educational needs of the children. These carry significant weight and the best interests of the appellant's grandson's short term educational need is a matter to which I give substantial weight in particular. On this basis, the temporary need outweighs the temporary harms and a three year permission, as sought, would allow time for the appellant's grandson to finish his further education.
37. I recognise personal circumstances were advanced in relation to the previous appeal. However it is apparent that the health and educational needs of the appellant and her family are more acute now than in 2018.

Conditions

38. I have had regard to the conditions suggested by the Council. I have slightly amended the wording of some to better reflect the advice in the Planning Practice Guidance and the Framework.
39. A condition restricting the development to three years and personal to the appellant to reflect their specific circumstances, is necessary in the interests of limiting the harms to the minimum time period necessary. A condition relating to the approved drawings is necessary in the interests of certainty. The other conditions relating to the number of caravans and mobiles, their position on site, commercial use of the site and external lighting, are necessary to minimise the impact on the character and appearance of the area.

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40. I have not attached the suggested conditions relating to landscaping. It would be unreasonable to require such planting when the permission will lapse in three years upon which time the site will need to be restored to its former condition and any such landscaping, which may yet to become established, removed.

Conclusion

41. The development conflicts with the development plan taken as a whole. However the material considerations set out above indicate a decision other than in accordance with the development plan. As such, the appeal is allowed.

A Owen

INSPECTOR

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Schedule of conditions

- 1) The use hereby permitted shall be carried on only by the following: Mrs Annie Gibbs, Mr Andrew Gibbs, their resident daughter and her resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter. After that time, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought on to the site in connection with the use shall be removed from the site within three months and the land shall be restored to its condition before the development took place.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2021-152v1-Location, 2021-152v1-Mobile and 2021-152v1- PropBlock.
- 3) No more than two static mobiles and two touring caravans shall be stationed on the site at any one time.
- 4) The caravans shall only be sited in accordance with plan no. 2021-152v1- PropBlock.
- 5) No commercial activities shall take place on the land, including the storage of plant, products or waste materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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APPEARANCES

FOR THE APPELLANT:

Annie Gibbs	Appellant
Simon McKay	SJM Planning
William Jones	Assistant Headteacher at Infiniti School

FOR THE LOCAL PLANNING AUTHORITY

Paul Gregory	Team Leader (Planning Applications)
Guy Martin	Senior Planning Officer

INTERESTED PARTIES

Andrew Keel	Chair of Ospringe Parish Council
Colin Jones	Vice Chair of Doddington Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

Policy DM 26 of the Swale Borough Local Plan 2017
Letter of support from The Queen's Regimental Riders Association
Letter from East Kent Hospitals University regarding the appellant